THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment Delivered on : 17.04.2007

\+ **WP(C) 2828/2006**

PRADEEP KUMAR JAIN ...Petitioner

- versus -

UNION OF INDIA ...Respondents

with
WP(C) 7210/2006

CHANDER PRAKASH MITTAL ...Petitioner

- versus -

UNION OF INDIA ...Respondents

with
WP(C) 7211/2006

SMT ANJANA ...Petitioner

- versus -

UNION OF INDIA & ORS ...Respondents

with
WP(C) 7220/2006

LT. COL. S.C. MANOCHA ...Petitioner

- versus -

UNION OF INDIA & ORS ...Respondents

Advocates who appeared in this case:
For the Petitioner : Ms Radhika Chandershekhar.
For the Respondents : Mr R.C. Nagia.

CORAM:-
HON'BLE MR JUSTICE BADAR DURREZ AHMED

1. Whether Reporters of local papers may be allowed

to see the judgment?

2. To be referred to the Reporter or not?

3. Whether the judgment should be reported in Digest?

BADAR DURREZ AHMED, J (ORAL)

1. These four petitions raise common issues and, therefore, they are being disposed of together. The writ petition No.2828/2006 titled Pradeep Kumar Jain v Union of India & Ors raises an additional issue wherein the termination of the licence agreement on the part of the respondents has also been challenged.

2. All the petitioners, by separate allotment letters, were alloted space for installation of STD/ISD/PCO booths at different Railway Stations in Delhi.

3. The allotments of space were made by Northern Railways in all the cases. Consequent upon the allotment letters which were individually issued to the petitioners licence agreements were entered into with them. The essential features of the licence agreements were that they were to be for one year each and that, in case, of breach of any of the conditions, the Northern Railways had the right to terminate the same during the tenure of the licence. Even otherwise, if the Northern Railways required the space for their own purpose, they could terminate and cancel the licence.

4. These licences were renewed from time to time. The petitioners are aggrieved by the letter dated 09.03.2005 which was issued to all the petitioners. The letter was to the following effect :-

> "Sub :- Notice for existing PCO/STD/ISD/FAX booth-holder at Delhi Jn: Railway Station West hall near entrance allotted without any tender.

> The validity of your above mentioned existing PCO/STD/ISD/FAX booth is upto 27.4.2005. Please note that the validity of your agreement for the above booth will not be extended beyond 27.4.2005 and this booth will be allotted through tender w.e.f. 28.4.2005 onward. If you desire, you may also participate in the tender when called for through press notification.
>
> This is for your information.
>
> For Sr. Divi. Comml, Manager,
> New Delhi.

The learned counsel for the petitioners submitted that although the said letter required that the agreement would not be extended beyond 27.4.2005, the Government of India, Ministry of Railway had decided that physically handicapped persons who were presently running PCO/STD/ISD booths at railway stations and whose contracts were expiring and were not due for extension as per the contracts would be allowed to continue their contracts even after expiry upto 27.4.2007 provided their working was satisfactory. In support of this contention, the learned counsel for the petitioners drew my attention to the letter dated 11.3.2005 which was issued by the Railway Board to the General Manager (Commercial) and All Zonal Railways and was to the following effect :

> "It has been decided that physically handicapped persons who are presently running STD / ISD / PCO booths at Railway stations and whose contracts are expiring now or later and which are not due for extension as per contract may be allowed to continue and their contract may be extended after expiry upto 27.4.2007 provided their working is satisfactory."

The learned counsel for the petitioners submitted that the same benefit that was given to the physically handicapped persons ought to be given to the petitioners also

inasmuch as the allotments made to the petitioners were also on compassionate grounds.

5. The learned counsel appearing on behalf of the respondents submitted that the Railway Board had taken out two policy circulars. One was dated 22.4.2002 and the other was dated 20.5.2002. The learned counsel for the respondents submitted that the policy of 22.4.2002 did not apply to the petitioners who were existing STD / ISD / PCO booth holders. He submitted that it is the policy of 20.5.2002 which applied to the existing STD / PCO / ISD booth holder including the petitioners. With reference to the said policy, he submitted that such booth holders were allowed to operate the booths in terms thereof upto 27.4.2005 subject to the conditions laid down in the said circular. It is in this context that the said letter dated 09.03.2005 was issued to all the existing booth holders including the petitioners indicating that their licences would not be extended beyond 27.4.2005 and that if they so desire they could participate in the tenders that were to take place thereafter.

6. The learned counsel for the respondents also submitted that the grievance of the petitioners that they should be treated as par with physically handicapped persons no longer survives as the matter was considered by the Ministry of Railways, Government of India and by a circular dated 07.06.2005 a decision was taken to extend the benefit to existing booth holders who were not physically handicapped. The relevant portion of the circular is as under:

> "It has been decided that the contracts of STD / ISD/ PCO booth holder other than physically handicapped person whose total period of contract as on 27.4.2005 is less 10 years may be

extended till such period when their total period of contract comes to 10 years or till 27.4.2007, whichever is earlier."

7. Considering the arguments advanced by the counsel for the parties, it is clear that the policy of 22.4.2002 does not at all apply to the petitioners. Under the policy of 20.5.2002, the petitioners are not entitled to any further extension beyond 27.4.2005. Initially, the benefit had only been extended to physically handicapped persons but in view of the circular dated 7.6.2005 that benefit has also been extended to others including the petitioners. Therefore, the petitioners can have no grievance on this ground any more. Their contract periods would, in any event, as in the case of physically handicapped persons, be upto 27.4.2007. In any event, that is the outer limit and the individual contracts of the petitioners may terminate earlier to that depending on when ten years period expired. Therefore, I am of the view that nothing further survives in this petition insofar as the common issues are concerned.

8. Coming to the additional issue in the case of Pradeep Kumar Jain, the said petitioner was additionally aggrieved by the fact that the allotment was terminated without following the policy. The facts of the case are that an allotment letter was issued to the petitioner on 11.3.1996. Consequently an agreement was entered into. That agreement had been extended from time to time. On 28.2.2005 a show cause notice was issued to Mr Pradeep Kumar Jain to show cause as to why the licence be not cancelled in view of the fact that during a vigilance check it was found that the petitioner was charging 25% to 30% extra from the customers. On 11.3.2005, the said Pradeep Kumar Jain sent his reply stating that the STD billing machine had gone out of order and he had sent it for repair. He also submitted that he did not know that the

meter was fast and that he only came to know of the excessive billing when the vigilance check was carried out. This explanation was not found satisfactory and by a letter dated 21.3.2005 the said Pradeep Kumar Jain's licence was terminated. The petitioner's contention is that the termination letter was contrary to the policy. The learned counsel for the petitioners referred to the policy of the respondents dated 22.4.2002 and, in particular, to clause 10 thereof. The same reads as under:

> "10) The Administrator (i.e. Divisional Railway Manager or General Manager) will have the right to impose fine/terminate the license if the licensee is not conforming to the conditions laid down by the Railways and if there are complaints against him/her for overcharging, etc. The contract will be terminated after issuing due notice. The termination of the license may be done on the basis of the defaults committed by the licensee and at least 3 chances may be afforded by imposing fine. The compounding of defaults may be empowered to Divisional Railway Manager with the powers of imposing fine not less than Rs.500 after the observance of the principles of Natural Justice."

She submitted that, as per the policy, it is clear that the licence could be terminated for, *inter alia*, the complaint with regard to overcharging provided at least three chances were given to the licence holders by imposing fine. She submitted that contrary to this policy, at the very first instance, the petitioner's licence has been terminated without giving any further chances by imposing fine.

9. The learned counsel for the respondents submitted that this policy of 22.4.2002 is not applicable to the petitioners inasmuch as it would apply to new allotments. However, insofar as the penalty measures are concerned, I am of the view that the Government and public authorities should apply the provisions with equal

measure to both existing and new allotments. Accordingly, even though strictly speaking the policy of 22.4.2002 is not applicable to the petitioner but, principles analogous to these contained in clause 10 ought to have been applied to the petitioner's case also. Therefore, if a reasoned view is taken, the only conclusion would be that the first instance of overcharging ought to have been dealt with by imposition of fine and not by terminating the licence straightaway. Accordingly I hold that the termination letter dated 21.3.2005 deserves to be set aside. It is accordingly set aside.

10. However, in view of the fact that the licence agreement with the petitioner cannot, in any event, continue beyond the ten years period from the initial allotment and not, in any event, beyond 27.4.2007, no order of restoration of the said PCO can be passed in this writ petition. It will, however, be open to the petitioner (Pradeep Kumar Jain) to claim compensation for the wrongful termination by way of separate proceedings before an appropriate forum.

These writ petitions stand disposed of.

BADAR DURREZ AHMED
(JUDGE)

April 17, 2007
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